IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3280 of 2007()

CC.105/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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PETITIONER: ACCUSED:

PERIYA KARUNAKARAN NAIR,
AGED 47 YEARS,
S/O.LATE THULUCHERRY KUNGHAMBU NAIR AND SAROJINI AMMA,
RESIDING AT KUZIPPURM IN MALAM VILLAGE HOSDRUG TALUK,
P.O. DARGHAS.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:

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1. **A.NATARAJAN, S/O.M.V.KUTTYKRISHNAN NAMBIAR,**
   RESIDING AT ATHIAMPUR IN BALIA VILLAGE OF
   HOSDRUG, P.O. KANHANGAD.

2. **THE STATE OF KERALA,**
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

Crl.M.C.No.3280 of 2007

Dated this the 25th day of October 2007

O R D E R

The petitioner is the first accused in a prosecution under Section 420 I.P.C. The petitioner had allegedly made a representation to the de facto complainant that he is the power of attorney holder of his wife and that he has the authority on the strength of that power of attorney to negotiate for the sale of a property of which he and his wife were joint owners. Believing that representation, the complainant allegedly entered into a transaction with the petitioner and parted with amounts to him. According to the complainant, he was under the bona fide belief that the representation made was true and believing the said representation, he had parted with the amount.

2. It has now turned out that the statement of fact that the petitioner had the power of attorney is incorrect, wrong and false. On the showing of the petitioner himself, that representation is false. The complainant, in these circumstances, filed a complaint before the learned Magistrate. That complaint was referred to the police under Section 156(3) Cr.P.C. The police, after investigation, filed a negative final report. The complainant, aggrieved by the negative final report, filed a protest complaint. On that protest complaint, cognizance has been taken. The petitioner has now rushed to this court with the

prayer that extraordinary inherent jurisdiction under Section 482 Cr.P.C may be invoked to quash the proceedings against him.

3. What is the reason? The learned counsel for the petitioner submits that the petitioner is willing to assign to the complainant his rights in the property. He is willing to adjust the advance amount received towards the price payable for his share in the property.

4. The said offer by the petitioner cannot obviously obliterate his alleged culpable liability for the offence of cheating allegedly committed by him. I shall scrupulously avoid any detailed expression of opinion on merits lest it would adversely affect the interests of the petitioner. Suffice it to say that on the facts referred above, I am not persuaded to agree that there is any justification for invocation of the jurisdiction under Section 482 Cr.P.C.

5. It is for the petitioner to appear before the learned Magistrate and, if he feels he is entitled to it, claim premature termination under Section 245(2) or 245(1) Cr.P.C. In any view of the matter, I am not satisfied that any failure or miscarriage of justice results from the impugned action of the learned Magistrate in having taken cognizance against the petitioner.

6. This Criminal Miscellaneous Case is in these circumstances dismissed with the above observation.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007